***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION No. 28180, 28181, 28182, 28183, 28186, 28193

–

and 28194 of 2005

% Dated: 06.01.2006

WRIT PETITION No. 28180 of 2005

Between:

Ch.Suryanarayana Raju, S/o.Venkata Narasimha Raju,
Raj Polytechnic , Poduru, R/o.Poduru, W.G.District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

WRIT PETITION No. 28181 of 2005

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Between:

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S.Satyanarayana S/O S.Narasimhulu, Col.D.S.Raju

Poltechnic, Poduru R/O Poduru, West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

WRIT PETITION NO. 28182 OF 2005

Between:

R.Ramesh Babu S/O Narasimha Raju, Col.D.S.Raju

Poltechnic, Poduru R/O Poduru, West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

Writ petition NO. 28183 of 2005:

Between:

R.V.Subba Raju, S/O Rama Raju, Col.D.S.Raju

Poltechnic, Poduru R/O Poduru, West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

Writ petition NO. 28186 of 2005:

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Between:

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M.Rama Krishnam Raju S/O Naga Raju, Workshop Attender,
Col.D.S.Raju Poltechnic, Poduru R/O Poduru, West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

Writ petition NO. 28193 of 2005:

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Between:

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R.Venkata Raju S/O Rajam Raju, Head of Civil Engineering

Department, Col.D.S.Raju

Poltechnic, Poduru R/O Poduru, West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

Writ petition No. 28194 of 2005:

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Between:

A. Dharma Rao S/O A.China Satyanarayana Murthy, Librarian,

Col.D.S.Raju Poltechnic, Poduru R/O Poduru,

West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical

Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

! COUNSEL FOR PETITIONERS: Mr.M.PANDURANGA RAO

^ COUNSEL FOR RESPONDENTS 1 AND 2 : G.P. FOR HIGHER TECHNICAL EDUCATION

^ COUNSEL FOR RESPONDENT NO.3: Mr.K.CHIDAMBARAM

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2002(1) ALD 322

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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Poltechnic, Poduru R/O Poduru, West Godavari District.

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West Godavari District.

..... PETITIONER

AND

The Govt of A.P., Rep by its Principal Secretary, Technical Education Department, Secretariat, Hyderabad and others.

.....RESPONDENTS

ORDER:

The petitioners in this batch of writ petitions are the employees of the third respondent-polytechnic college. All of them have been placed under suspension, through separate orders dated 27.10.2005, alleging certain acts of misconduct. Their grievance is that though the period of two months had elapsed by 26.12.2005, they have not been reinstated into service under Sub-section (3) of Section 79 of the A.P. Education Act, 1982 (for short "the Act"). They place reliance upon a judgment rendered by a Division Bench of this Court in ***B.Sanjeeva Rao Vs. Regional Joint Director of School Education, Gununtur*** .

Sri M.Pandu Ranga Rao, learned counsel for the petitioners submits that the purport of Sub-Section (3) of Section 79 of the Act is very clear, to the effect that once the period of two months elapses, the employers are under obligation to reinstate the suspended employees into service. He pleads that since the enquiry is not concluded within two months and the third respondent did not obtain any orders of extension of the period of suspension from the second respondent, the occasion to invoke the proviso to Section 79(3) of the Act does not exist.

Learned Government Pleader for Technical Education submits that the second respondent received a letter dated 26.12.2005 from the third respondent stating that the latter intended to conclude the enquiry before 28.12.2005 and appointed an enquiry officer, stipulating the date for appearance of the petitioners as 24.12.2005, but, the counsel representing them, pressed for adjournment. She contends that the request of the third respondent for extension of time is under consideration by the

second respondent.

Sri.K.Chidambaram, learned counsel for the third respondent, who took notice at the stage of admission, submits that the petitioners did not cooperate for the completion of enquiry within the stipulated time, and faced with that situation, the third respondent approached the second respondent for extension of time. He contends that under the facts and circumstances of the case, the benefit of the proviso needs to be extended to the third respondent.

It is the matter on record that the petitioners have been placed under suspension on 27.10.2005. The third respondent is an unaided Private Educational Institution. Sub-section (3) of Section 79 of the Act mandates that in case the disciplinary proceedings against an employee, who is placed under suspension, is not concluded within two months, he shall be reinstated. The proviso enables the extension of such period, by another two months, for reasons to be recorded. In the instant case, it is not in dispute that the enquiry was scheduled to take place on 24.12.2005. However, on the request made on behalf of the petitioners herein, it was postponed to 07.01.2006. It is stated that the representative of the petitioners sought time on the ground that he must get the statements from witnesses. Faced with this situation, the third respondent addressed a letter, dated 26.12.2005, to the second respondent, obviously seeking extension, as provided for, under proviso to Section 79(3) of the Act.

In ***B.Sanjeeva Rao's case*** (supra), a Division Bench of this Court held that Sub-Section (3) of Section 79 of the Act is mandatory and that the time frame stipulated therein, must be followed by the managements of the Educational Institutions covered by it. On the facts of that case, the necessity to deal with the circumstances under which the initial period of two months can be extended by a further period of two months was not dealt with, in detail. The Court, however, held that four months is the maximum period for which an employee of private educational institution can be placed under suspension.

It is true that in the instant case, the period of two months had elapsed, and as of

now, the second respondent has not passed any order, extending the same beyond two months. The fact, however, remains that the third respondent addressed a letter seeking extension, before the expiry of the initial two months. The object underlying sub-Section (3) or the proviso thereto, is to ensure that the disciplinary proceedings against an employee of private Educational Institutions are concluded at the earliest, and at the same time, the delay caused on account of the non-cooperation of the employee is not taken advantage of. Viewed from this angle, if the enquiry could not be completed within the initial spell of two months on account of non-cooperation of the employee and a request on behalf of the management is pending with the competent authority, the occasion to direct the reinstatement of the employee does not arise. In such cases, the management would be put to prejudice on account of the non-cooperation on the part of the employee on one hand, and inaction on the part of the competent authority, on the other. This was never the intention of the legislature in enacting Section 79 of the Act. The reasonable interpretation to be placed on the provisions would be that, in case the disciplinary proceedings could not be completed within a period of two months on account of non-cooperation of the delinquent employee, and the management has forwarded its request to the competent authority seeking extension, the benefit under the proviso must be extended to the management. If the competent authority passes an order, refusing such extension before expiry of such additional period of two months, the employee must however, be reinstated, forthwith. this could be different altogether. Any other approach would amount to putting a premium, on the non-cooperation on the part of the delinquent employee.

Inasmuch as the application made by the third respondent is pending with the second respondent, the former is entitled for the benefit under the proviso to Sub-section (3) of Section 79 of the Act. As a result, the third respondent would be under obligation to conclude the enquiry against the petitioners by 27.02.2006. However, in case the second respondent passes an order in the meanwhile, refusing to accede to the request of the third respondent, the third respondent would be under obligation to reinstate the petitioners soon, after such communication.

For the foregoing reasons, the writ petitions are disposed of, directing that the third respondent shall be under obligation to reinstate the petitioners herein, into service, in case the disciplinary proceedings against them are not concluded by 28.02.2005. It is made clear that in case the second respondent refuses to extend the period of suspension, the third respondent shall be under obligation to reinstate the petitioners with effect from the date of receipt of such communication. There shall be no order as to costs.

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06.01.2006

NOTE: L.R. Copy to be marked.

(B/o)

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